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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

Number 831

315-803

■

ERMINIO MORANTE, *Petitioner*

v.

THE PEOPLE OF THE STATE OF NEW YORK

■

Petition for Writ of Certiorari to the County Court of Westchester County, State of New York

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Petition for Writ of Certiorari to the County Court of Westchester County, State of New York

To the SUPREME COURT OF THE UNITED STATES OF AMERICA:

The petition of Erminio Morante shows to the Supreme Court of the United States as follows:

A

Summary Statement of Matters Involved

1. *Statement of Facts.*

The petitioner is an ordained minister of Jehovah God and is known as one of Jehovah's witnesses.

This is a criminal action. Petitioner was arrested June 14, 1940, and charged with desecrating the Sabbath through a violation of Section 2147 of the Penal Law of the State of New York, because he was alleged to have publicly offered

for sale and attempted to sell a pamphlet entitled *Judge Rutherford Uncovers Fifth Column.*

He was charged with said offense on complaint of John F. Cregier before Stanley E. Anderson, Police Justice of the Court of Special Sessions in the Village of Mount Kisco, New York, on such date. On August 22, 1940, he was tried before said justice without a jury. R. 2.

The undisputed evidence established at such trial showed that petitioner was going from house to house in the residential section within the Village of Mount Kisco presenting to residents at their homes the booklet *Judge Rutherford Uncovers Fifth Column,* accepting small money contributions to aid in printing and distributing more like literature; and to those unable to contribute but who promised to read he left a copy without contribution. The booklet was offered in evidence as Defendant's Exhibit B, printed in the record at pages 5 to 24. The distribution of the booklet was employed by the petitioner as his way of worshiping Almighty God.

The booklet is paraphrased as follows:

> 'THIS BOOKLET publishes the letter of the author written and addressed to a reporter of the New York *Post* in response to the request for information, for publication in said newspaper, concerning Jehovah's witnesses, who at that very time were prominent before the public eye because of the violent persecutions that had broken out throughout the land and the numerous false charges hurled against them by members of the Roman Catholic Hierarchy and other religionists, including the accusation that Jehovah's witnesses were *fifth columnists* and a subversive organization financed by the totalitarian powers of Europe.
>
> 'Because the information was vital to millions of other Americans besides readers of the *Post,* and who were concerned about the preservation of American ideals of free speech, press, assembly and worship, the

aforesaid letter was printed and circulated (with additional comments) throughout the United States. (And fortunately, too, for Americans, because the *Post* failed to print Judge Rutherford's statement as supplied them, and the general acceptance and appreciation of the American public of this most timely information is marked by its wide distribution, as indicated in the *Yearbook of Jehovah's witnesses* for 1941, pages 67, 68: "The booklet *Judge Rutherford Uncovers Fifth Column* started through the factory on June 28, and in but three months 5,523,322 have already gone out.")

'This booklet furnishes the author's candid answers to the probing questions of the reporter as to the outburst of violence against Jehovah's servants, the identity of those participating openly in or outspokenly inciting to such violence, the distorted charges published against them in religious and secular newspapers, the cause of the troubles, and the origin, general history and purposes of the society of which Judge Rutherford is president, to wit, the Watch Tower Bible and Tract Society.

'In his replies the author makes no personal attack on anyone, nor is any attempt made to hold up anyone to ridicule or obloquy or shame for his religious or other beliefs, but facts are stated baldly, with no effort to conceal who are the perpetrators of or inciters of and connivers at violation of law and endangerment of American institutions prized by all freedom-lovers, regardless of creed and rank or position. This exposure is not so written or couched as to stir up violence even against the perpetrators or inciters (and the phenomenal distribution of the booklet has not provoked any such as of record), but that Americans, and especially followers of Jesus Christ, might be put on guard against those who conceal their real motives and undermine the freedoms and institutions which have been a boon to this country; and that they might avail them-

selves of the legal and constitutional and orderly means of self-defense.

'The author does not state his opinions, but authentic records of cases in point, and his conclusions are fully established, that the organization which he names is the real *fifth column* in America, and not those whom this very organization accuses of such role; and that the consistent course of the organization he names in connection with mobs, propaganda, false charges, duplicity and activities of opposition to Jehovah's witnesses in deprivation of the exercise of their guaranteed rights as followers and servants of Christ, as well as peaceable citizens, is in agreement with the course of the same organization in foreign lands which have been betrayed by *fifth-column* groups into the power of the totalitarian dictatorships, including Germany, where more than six thousand of Jehovah's witnesses have been imprisoned, many being executed (page 20). Cognizance is taken of the fact (page 31) that "the unanimous Declaration of Independence" of the State of Texas puts the finger on the same organization as inimical to true Americanism and brands its agents as "eternal enemies of civil liberty, the ever-ready minions of power, and the usual instruments of tyrants" and as "denying us the right of worshipping the Almighty according to the dictates of our own conscience". The exposed activities of the Roman Catholic Hierarchy in America against Jehovah's witnesses during 1940 up until publication of this booklet and as briefly set forth herein prove that the said organization is unchanged in purpose and action and has the same spirit as declared in the Texas Declaration.

'The Watch Tower Bible and Tract Society has an open record before the country. It has operated for more than 60 years, including national crises, and it has published the source of its financial means and the use and expenditures of s. ch, in the issues of *The Watch-*

tower and, more recently, the *Yearbook of Jehovah's witnesses*, since 1927, and the author also describes the method of carrying on the Bible educational campaign in America and other lands. (Pages 19-21) And the statement by the then United States Solicitor General, Francis Biddle, during the time of mob action and demand for investigation, clears Jehovah's witnesses of all charges by religionists as to *fifth-column* activities and connections. (Page 32) Judge Rutherford's suggestion of a Congressional investigation of the organization accusing and opposing Jehovah's witnesses (page 22) is a proper conclusion to what he has written in the preceding paragraphs and points out the proper present course to prove beyond controversy who the anti-American *fifth-column* are.'

The undisputed evidence showed that petitioner was an ordained minister of the Almighty, Jehovah God, preaching the Gospel in the manner commanded by Him and following in the footsteps of the Lord Jesus Christ and His apostles, doing good unto the residents of Mount Kisco and performing a work of interest, convenience and necessity.

Petitioner possessed credentials attesting to the fact that he was such ordained minister, which credentials appear as Defendant's Exhibit A at the record, pages 4 and 5.

At the conclusion of such hearing on August 22, 1940, the court took the case under advisement and briefs were submitted and on September 12, 1940, decision was rendered, finding the petitioner guilty as charged because money was accepted for the booklet, and imposing the maximum fine allowed by the statute. R. 4.

On September 16, 1940, petitioner duly presented to the County Judge of Westchester County his affidavit for appeal and certificate of reasonable doubt. (R. 27-30) Thereupon on such date the County Judge of Westchester County signed an order allowing said appeal and directing the

Court of Special Sessions to make its return in the time and manner required by law. R. 30.

Notice of appeal and copy of affidavit for appeal and certificate of reasonable doubt were duly served upon the Court of Special Sessions (R. 4, 26), and copies of same were acknowledged by the District Attorney for Westchester County. R. 30.

Thereafter, in the time and manner required by law, to wit, on April 15, 1941, the case was brought on for argument before the County Court of Westchester County (R. 31) and on May 5, 1941, the County Court entered an order affirming said judgment of conviction (R. 31, 32) and thereupon the Court rendered and entered a judgment affirming said conviction. R. 32.

In the time and manner required by Article 520 of the Code of Criminal Procedure of the State of New York, petitioner duly presented in writing application for allowance of appeal from the County Court of Westchester County to the Court of Appeals of New York. R. 32-36.

Said application was presented to Chief Judge Irving Lehman on May 28, 1941, and taken under advisement, together with briefs submitted on such date, and application was denied on October 2, 1941. (See certificate of Chief Judge Irving Lehman of the Court of Appeals of New York.) R. 36, 37.

2. *Statute here drawn in question.*

The legislation here drawn in question is a statute of the State of New York, known as Section 2147 of the Penal Law, entitled "Public Traffic on Sunday" and otherwise known as the "Sabbath Law", reading as follows:

> "All manner of public selling or offering for sale of any property upon Sunday is prohibited, except as follows:
>
> 1. Articles of food may be sold, served, supplied and delivered at any time before ten o'clock in the morning;

2. Meals may be sold to be eaten on the premises where sold at any time of the day;

3. Caterers may serve meals to their patrons at any time of the day;

4. Prepared tobacco, milk, eggs, ice, soda-water, fruit, flowers, confectionery, souvenirs, newspapers, gasoline, oil, tires, drugs, medicines and surgical instruments, may be sold in places other than a room where spirituous or malt liquors or wines are kept or offered for sale and may be delivered at any time of the day.

5. Delicatessen dealers and bakeries may sell, supply, serve and deliver cooked and prepared foods, between the hours of four o'clock in the afternoon and half past seven o'clock in the evening, in addition to the time provided for in subdivision one hereof.

The provisions of this section, however, shall not be construed to allow or permit the public sale or exposing for sale or delivery of uncooked flesh foods, or meats, fresh or salt, at any hour or time of the day. Delicatessen dealers shall not be considered as caterers within subdivision three hereof." R. 33, 34.

Other related sections of the Penal Law regarding the "Sabbath", pertinent to this inquiry, read as follows:

"Section 2140. The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community."

"Section 2142. Sabbath breaking is a misdemeanor, punishable by a fine not less than five dollars and not more than ten dollars, or by imprisonment in a county jail not exceeding five days, or by both, but for a second or other offense, where the party shall have been previously convicted, it shall be punishable by a fine not less

than ten dollars and not more than twenty dollars, and by imprisonment in a county jail not less than five nor more than twenty days."

3. *Substantial Federal Questions Presented.*

By motion to dismiss duly made in the Court of Special Sessions of Mount Kisco (R. 3); by affidavit for appeal and certificate of reasonable doubt presented to the County Court of Westchester County (R. 27-30); by briefs and argument filed in the County Court (R. 31); and by application for allowance of appeal from the County Court of Westchester County duly presented to Chief Judge Irving Lehman of the Court of Appeals of New York (R. 32-36), there were presented and raised before each of said courts the following questions:

(1) That petitioner is an ordained minister of Jehovah God, preaching the gospel by distribution of literature, and his activity did not come within the terms of the said statute but within the exceptions and therefore petitioner was not guilty.

(2) That the statute, as construed and applied to petitioner's activity, was unconstitutional and void, because it deprived him of his right of freedom to worship Almighty God as by Him commanded and according to dictates of petitioner's conscience, and also deprived petitioner of his right of freedom of press, all contrary to Section One of the Fourteenth Amendment to the United States Constitution.

The Court of Special Sessions wrote an opinion holding that the "Sabbath Law" in question applied to a minister of the Gospel in the same manner as to any commercial activity and held that the constitutional rights of petitioner had not been violated and thereby overruled the aforesaid Federal questions. R. 24-26.

The County Court of Westchester County specifically overruled each of the claims of law made by petitioner and overruled each Federal question presented to it and held

that the statute was applicable and that the petitioner was not denied his rights of freedom of press and worship, contrary to the Fourteenth Amendment to the United States Constitution. R. 31, 32.

Chief Judge Irving Lehman of the Court of Appeals of New York expressly passed upon the constitutionality of said statute and the aforesaid Federal questions, and held the same did not present a question of law that should be reviewed by the Court of Appeals. R. 26-37.

Therefore, there are presented to this Court for review substantial Federal Questions as follows:

Does the statute in question, as construed and applied by the courts below, violate Section One of the Fourteenth Amendment to the United States Constitution in that it deprives petitioner of his right of freedom to worship Almighty God according to the dictates of his conscience, and of freedom of press?

Does the statute, as fairly construed, include the activity of the petitioner, as an ordained minister of the gospel?

B

Reasons Relied on for Allowance of Writ

The questions presented here are of national importance and basically affect the fundamental personal and civil rights of every person domiciled within the United States. The courts of New York have rendered a decision on a most important Federal question in a way that nullifies the constitutional guarantees and provisions with respect to personal freedom. The opinions of the Court of Special Sessions and the County Court of Westchester County and order denying appeal by Chief Judge Lehman of the Court of Appeals have misconstrued opinions of this Court and warped them so as to distort their true meaning for the purpose of amputating petitioner's rights. The opinions and decisions of the New York courts are in direct conflict with

applicable decisions of this Court. The New York courts have radically and so far departed from the accepted and usual course of judicial proceedings as to demand an order of this Court halting such extraordinary departure from established principles of liberty and constitutional law.

On March 10, 1932, the Attorney-General of the State of New York wrote an opinion, construing this particular statute, Section 2147, in which he expressly held that the selling of "religious books" on Sunday by a minister of the Gospel or Sunday School teacher is not *"public selling or offering for sale"* included in the statute. (45 N. Y. State Dept. Reports 286) R. 24, 25.

In this connection, the Court's attention is invited also to the case of *People* v. *Finn*, 57 Misc, 569, 110 N. Y. S. 22, in which the defendant was committed by a city magistrate upon a charge of violating the Penal Code protecting the Sabbath, similar to this, by exhibiting Sunday moving pictures. The evidence showed that the act consisted in exhibiting pictures illustrating lectures delivered at the same time on the Bible story of Joseph and his brethren, and also an illustrated lecture on the lumber industry in California. It was held that the exhibition of such moving pictures in relation to a subject-matter of purely intellectual interest did not constitute "public sport, exercise, or show" so as to violate the Sabbath laws within the intention of the code.

By common consent of the people throughout every State of the Union, such as in the State of New York, the first day of the week, called Sunday, is set aside for rest and the practice of worshiping Almighty God. The law of the United States and of every state recognizes this. No law can be passed, of course, compelling the practice of any form of religion or worship on Sunday; but the laws protect anyone exercising his right to worship Almighty God according to the dictates of his conscience on Sunday in the manner chosen, such as was chosen by the petitioner in this case and as he was so exercising. The work of distribution of Bible literature and worshiping Almighty God by doing good unto

others in calling upon them at their homes and offering to them helpful Bible explanations in printed form, and taking from some persons receiving such literature small contributions to aid in producing and distributing more like literature, is deemed and considered benevolent and charitable and a work of necessity within the meaning of the law; that is, the Sunday or so-called "Sabbath law".

In prohibiting labor on Sunday and the sale of goods, wares and merchandise on Sunday, the law makes exceptions to labor of necessity and charity and the sale of necessities and the practice of the free worship of Almighty God according to the dictates of conscience.

In this case it is admitted and also not disputed that the petitioner was exercising his right to worship Almighty God by going from house to house offering to the people the booklet referred to, which relates to explanation of Bible prophecy and bringing to the readers' attention many other facts of importance now due to be known as existing in fulfillment of Bible prophecy and which the people vitally need to know. The petitioner testified that he was commanded by Almighty God to go from house to house and from door to door with this literature, and that he did so from a sense of moral duty or a feeling of kindness for humanity in his desire to warn them so that they might turn from one of the greatest disasters that the world will ever know, to wit, "the battle of that great day of God Almighty" at Armageddon, which is very near.

Therefore it is manifest that from the decisions and construction of the statute by the New York courts, a minister of the Gospel is not included and cannot be convicted for preaching the Gospel and simultaneously accepting money contributions on Sundays. Sunday is set aside as a time of worship and service of Almighty God. The work of the petitioner is benevolent and charitable, and it is to be noticed that he was following in the footsteps of the Lord Jesus and the apostles by going from house to house in preaching the Gospel. (See Mark 6:6; Luke 8:1; Acts 20:20; 1 Peter

2:9, 21.) The work of the petitioner was a work of necessity. (See 1 Corinthians 9:16; Hebrews 7:12; 8:3.)

Therefore the undisputed evidence shows that petitioner was engaged in acts of worship of Almighty God, according to the dictates of his conscience; and the undisputed evidence shows that he was engaged in "press" activity.

Although the statute is valid on its face, it is the wrongful and unconstitutional application thereof that makes it void, as this Court said in *Concordia Fire Insurance Co.* v. *Illinois,* 292 U. S. 535, 545:

> "Whether a statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied. It may be valid when given a particular application and invalid when given another."

In answer to the contention that the statute is regulatory, we wish to point out that one can engage in the activity of preaching the Gospel on Sunday by distribution of literature free of charge without being subject to the statute and go anywhere he pleases or any time he pleases without regulation under the statute. The statute is not a regulatory statute, but prohibitory, and limits freedom of press and freedom of worship to free distribution of literature, thereby prohibiting the taking of contributions to assist in the benevolent work done by petitioner.

Therefore we submit that the courts in the case at bar have ruled directly contrary to *Schneider* v. *State,* 308 U. S. 147, *Lovell* v. *City of Griffin,* 303 U. S. 444, and *Cantwell* v. *Connecticut,* 310 U. S. 296, and have wrongfully deprived petitioner of his rights of freedom of press and freedom to worship Almighty God.

Wherefore your petitioner prays that this Court issue a writ of certiorari to the County Court of Westchester County, New York, directing such court to certify to this Court for review and determination on a day certain to be named

therein, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the decree of that court be reversed, and that your petitioner may have such other and further relief in the premises as to this Court may seem just and proper under the circumstances.

ERMINIO MORANTE
Petitioner

By
JOSEPH F. RUTHERFORD
HAYDEN C. COVINGTON
Attorneys for Petitioner

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

A
Opinions of the Courts Below

The opinion of the Court of Special Sessions, the County Court of Westchester County and the certificate of Judge Irving Lehman of the Court of Appeals of New York, are not reported, but appear in the record at, respectively, pages 24-26, 31-32 and 36-37.

B
Jurisdiction

1. *Timeliness.*

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)].

The judgment of the County Court of Westchester County was rendered and entered on May 2, 1941. R. 32.

Article 520 of the Code of Criminal Procedure provides for the making of an application for leave to appeal to the Court of Appeals of the State of New York, which is not a matter of right but which is addressed to the discretion of the Chief Judge of the Court of Appeals. On May 28, 1941, within the time required by said article, petitioner duly presented to Chief Judge Lehman said application for leave to appeal. R. 36, 37.

The application was not determined by the Chief Judge of the Court of Appeals until October 2, 1941. (R. 37) The judgment of the County Court of Westchester County became final on October 2, 1941, the date of the denial of said application for leave to appeal to the Court of Appeals.

The petition for certiorari is duly filed and presented to this Court within ninety days from such date and is therefore timely.

2. *The statute.*

The validity of state legislation under the United States Constitution was drawn in question in this case and the decision of each of the New York courts was wrongfully in favor of this validity. The legislation here challenged is a statute of the State of New York, Penal Law Section 2147, and is set forth, together with other pertinent statutes in the Petition for Writ of Certiorari, pages 6 to 8, supra.

In deciding that the statute is not unconstitutional because it abridges freedom of speech, press and worship in violation of the Fourteenth Amendment to the United States Constitution, the County Court of Westchester County held that the statute properly applied to the activity of petitioner, and decided in favor of its validity on its face and as so applied. R. 31, 32.

Petitioner duly and properly urged in all the courts below that the said statute as construed and applied to him was invalid because it deprived him of the above described rights, contrary to Section One of the Fourteenth Amendment to the United States Constitution.

From the very beginning, therefore, the validity of the legislation here challenged as being in contravention of the Fourteenth Amendment was thus drawn in question. The judgment of the trial court was in favor of the validity of such statute and also the County Court of Westchester County found in favor of the validity thereof, overruling such Federal questions.

3. *County Court of Westchester County, the highest Court in the State of New York in which a decision could be had.*

The County Court of Westchester County was the highest court in the State of New York in which a decision could be had in this cause, although such is not the highest court in the State of New York. The order of affirmance by the County Court was not susceptible to further review in the state courts by a matter of right. All proper steps were taken for further review in presenting the case to Chief Judge

Irving Lehman of the Court of Appeals of New York. He refused to exercise his discretionary power and allow a review by the New York Court of Appeals. His refusal to exercise his sound discretion made the County Court the court of last resort and therefore the petition for certiorari is to the County Court of Westchester County, State of New York. See *Bacon* v. *Texas,* 163 U. S. 207, 215; *Sullivan* v. *Texas,* 207 U. S. 416, 422; *San Antonio & A. P. R. Co.* v. *Wagner,* 241 U. S. 476, 477; *Randall* v. *Board of Commissioners of Tippecanoe County, Ind.,* 261 U. S. 252; *Western Union Tel. Co.* v. *Crovo,* 220 U. S. 364, 366; *Stanley* v. *Schwalby,* 162 U. S. 255, 269; *Norfolk & S. Turnpike Co.* v. *Virginia,* 225 U. S. 264, 269; *Cuyahoga Power Co.* v. *Northern Realty Co.,* 244 U. S. 300, 302, 303; *Western Union Tel. Co.* v. *Priester,* 276 U. S. 252, 258; *Pennsylvania Railroad Co.* v. *Illinois Brick Co.,* 297 U. S. 447, 453; *Mellon* v. *O'Neill,* 275 U. S. 212, 213; *Second National Bank of Cincinnati, Ohio,* v. *First National Bank of Okeana, Ohio,* 242 U. S. 600; *Chesapeake & Ohio Ry. Co.* v. *Kuhn,* 284 U. S. 44, 45, 46.

C
Statement of the Case

A full statement of the case has been given herein, pages 1 to 9, supra, of the Petition for Writ of Certiorari and for the sake of brevity will not be repeated, but is here referred to.

D
Specification of Errors

Petitioner assigns the following errors in the record and the proceedings of said case:

1. The County Court of Westchester County committed fundamental error in affirming the judgment of the Court of Special Sessions, by failing to hold that the statute, as construed and applied, deprived petitioner of his right of

freedom to worship Almighty God as by Him commanded in the Bible and according to dictates of petitioner's conscience, and of freedom of the press, contrary to Section One of the Fourteenth Amendment to the United States Constitution.

2. The County Court of Westchester County committed fundamental error in failing to hold that the statute did not include the activity of the petitioner engaged in preaching the Gospel of God's Kingdom.

For these reasons, it is reversible error for the County Court of Westchester County to affirm the judgment of conviction rendered by the Court of Special Sessions and hold that the statute was valid and constitutional as construed and applied.

ARGUMENT

The statute is invalid and unconstitutional as construed and applied because it deprives petitioner of his right of freedom to worship Almighty God as by Him commanded in the Bible and according to dictates of petitioner's conscience, and of freedom of the press, contrary to Section One of the Fourteenth Amendment to the United States Constitution.

Due to the fact that enforcement of "blue laws" or desecration-of-Sabbath laws has been relegated to the Dark Ages and the "horse and buggy" days, there have been no decisions on the question that can be called recent, except that of *State of Iowa* v. *Paul E. Mead et al.*, 300 N. W. 523, decided by the Iowa Supreme Court on November 12, 1941, to be referred to later. However, a search of the authorities under statutes identical with this in other states shows conclusively that the activity of petitioner does not come within

he prohibition of the statute, but within the exception of work of charity and necessity".

The plain and clear purpose of this law is to protect everyne in his way of worship on the Sabbath.

Jehovah's witnesses are preaching the Gospel; and this ctivity of preaching, although not practiced as do religionsts, is clearly within the exception of the statute, and not ithin the prohibition.

It is generally understood, by almost everyone, that all ssociations of persons who engage in ecclesiastical cereonies and *also* societies whose members study the Bible nd worship Almighty God are religious organizations. *Within the meaning of the law,* ALL such associations and ocieties are considered *religious* organizations; but accordng to the Bible definition, there is a difference.

Any formal worship of another as a superior or supreme ne by persons who rely upon traditional teachings of men, ogether with ceremonies, is religion.

A servant and follower of Jesus Christ is one who strictly nd exclusively adheres to the Word of Almighty God, Jehoah, in spirit and in truth, and does so *without* indulging formal ceremonies. Christ Jesus never was a religionist, nd His followers, therefore, are not religionists, within the iblical meaning of that term. Accordingly they follow in is footsteps in going from house to house.—Mark 6:6; uke 8:1; Acts 20:20.

But from the *legal point of view,* all religious organizaons and also every corporate group of persons who serve lmighty God are put in the same class; and hence the petioner is entitled to the benefit of the exemption or exption put in the law. The law does not contemplate and as never intended to interfere with one's way of worship, egardless of what way or means he employs. To say that does apply means to establish a state *religion* by prohibitg that practice which does not seem pleasing to the law nforcement officers.

It may be argued that simultaneous acceptance of money

contributions from recipients of the literature distributed brings Jehovah's witnesses within the statutory terms "public selling or offering for sale of any property". Again we say that the exception applies to this particular provision of the statute also. The "buying and selling" here prohibited is the buying and selling of ordinary commercial articles of merchandise, and not articles employed in preaching the Gospel. Furthermore, to *sell* means to make a profit, and here the undisputed evidence is that there is no profit made whatsoever. On the contrary, the work the petitioner did in preaching the Gospel is carried on at a loss. It is shown in the undisputed evidence that it is a work of charity.

A clergyman of a religious organization occupies his pulpit on Sunday, talks to or harangues the members and others in the congregation, and solicits money from them and receives money. Often this is for his salary, but it may be for missionary work; but whatever it is for, the courts have held that such action is not a violation of the law. See *In re Hull,* 18 Idaho 175.

Surely calling at a person's home on Sunday and quietly talking to the resident about the Word of God and the wonderful provision made by Almighty God as described in His Word, and the warning commanded by Almighty God to be given to the people, cannot be held to interfere with public morals, health or peace and safety. The *real purpose* of laws such as the Sabbath law here in question, regulating what shall be done on Sundays, is to restrain business conducted for private pecuniary gain to the dealer or performer of such activity, and general *commercial* transactions carried on ordinarily on other days of the week.

The work of Jehovah's witnesses is neither "commercial" nor "business" conducted for private pecuniary gain. No profit was made, as was testified by petitioner. He delivered three of such booklets free of charge and from a recipient of one booklet he received a contribution of five cents. The undisputed evidence shows that his income did not exceed

the amount of money that it cost him to distribute the literature. See *Bennett* v. *Brooks,* 91 Mass. 118.

Furthermore, to bring an act within the terms and provisions of this particular statute, it must be shown that the petitioner's activity was a "commercial" or "business" one. The undisputed evidence in this case shows that he was not engaged in a "commercial" or "business" transaction, but solely in preaching the Gospel.

The statute has been wrongly construed. It is its misapplication that makes it unconstitutional. *Concordia Fire Ins. Co.* v. *Illinois,* 292 U. S. 535, 545.

The Scriptures declare that all persons who are in a covenant with Almighty God, JEHOVAH, and who sincerely obey His law and serve Him by declaring His Name publicly and from door to door are Jehovah's witnesses. (Isaiah 43:9-12) The Lord Jesus Christ is Jehovah's Chief Witness, and said that He came to earth to bear witness to the truth; and that His followers must likewise bear witness to the truth.

Recognizing this obligation, Jesus Christ's apostle Peter wrote that all such of Jehovah's witnesses must follow in the footsteps of Christ Jesus by bearing witness to the truth. (1 Peter 2:9, 21) As such ministers of Jehovah God and as Jehovah's witnesses, each of them is required by God's written law contained in the Bible to go from house to house declaring the good news of His Kingdom and the day of His vengeance. (Isaiah 61:1-3; Matthew 24:14) It is said in the Bible that Christ Jesus went round about the villages teaching, from house to house. (Mark 6:6; Luke 8:1) So also did the petitioner. Christ Jesus expressly commanded (Matthew 10:7, 12-14) that all of His followers must preach the Gospel of God's Kingdom by going from house to house. (Acts 20:20) To worship Almighty God means to obey His commandments, as it is written: "Thou shalt worship the Lord thy God, and him only shalt thou serve." (Matthew 4:10) "God is a Spirit! and they that worship him must worship him in spirit and in truth." (John 4:24) To *worship*

means to serve, which service can be rendered rightly to Jehovah God alone, and thus He is made the object of supreme affection and obedience.

By some it may be contended that going from door to door with Bible literature is not a way of worshiping Almighty God.

This Court and the Congress in various statutes specifically define that no person has the right to say whether the act of another is or is not a genuinely obedient act of worship of Almighty God. See *Reynolds* v. *United States,* 98 U. S. 145, 162, 163. That case cites with approval the bill passed by the House of Delegates of Virginia, the preamble of which defines religious freedom, reciting:

> "that to suffer the civil magistrate to intrude his powers into the field of opinion, . . . is a dangerous fallacy which at once destroys all religious liberty", and "it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

The *way* of worshiping Almighty God as done by petitioner in this case is commanded by the written law of Almighty God. God's law is Supreme. This rule is recognized by Blackstone in his *Commentaries* (Chase 3d ed., pp. 5-7) and Cooley in *Constitutional Limitations,* 8th ed., p. 968.

The petitioner greatly desires to have life and to live, and thus he must serve Almighty God; for it is written that God is the fountain of life. (Psalm 36:9) One who desires to live must obey God's law.—John 17:3.

In this connection we call attention to the opinion of this Court in *Schneider* v. *State,* 308 U. S. 147, where the Court held that the most effective way of distributing literature was from house to house.

With respect to the question of receiving contributions and sale, this Court held that a statute to regulate contributions for a religious organization was unconstitutional as

construed and applied to the activity of Jehovah's witnesses. *Cantwell* v. *Connecticut,* 310 U. S. 296.

The pernicious doctrine that constitutionally secured "free press" extends only to *free* or gift distribution of literature is a new theory unheard of until modern-day totalitarian principles have pushed to the fore. Such erroneous claim means that a person would be entitled to the protection of the constitutional guarantees of freedom of press against statutes such as this if he gave away printed matter, but if he *sold* such matter, he would not be entitled to this fundamental personal privilege. The claim is, therefore *foolish.* Newspapers, magazines and other periodicals are sold daily including Sunday, on the streets and elsewhere in every community of this land. Money is received in exchange. The newspaper industry is a profitable one and many have grown wealthy through it. They are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it.

One who is doing good, such as the petitioner here, by constantly and continuously bringing printed matter on subjects of great importance to the attention of the public, through "press activity", is entitled to let those receiving the information aid in keeping the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must "go bankrupt" by forced "free" distribution of literature in order to receive the "free press" protection of the Constitution.

Such a reprehensible contention, if permitted to stand, means the death knell to freedom of press in America.

The simultaneous acceptance of money contributions from some recipients of the literature is only incidental to the main activity of petitioner. It is a means to an end, that is to say, to aid in defraying cost of further proclamation of the Kingdom message of Almighty God.

The theory advanced by the Court of Special Sessions, approved by the Westchester County Court, would make

constitutional guarantee of freedom of the press the sole prerogative of the rich. This would "sandbag" the Constitution and sabotage all the liberties of the people.

In this connection we call to the Court's attention the case of *Commonwealth* (Borough of Clearfield) v. *Reid et ux.*, 20 A. 2d 841, where President Judge Keller, in setting aside conviction of two of Jehovah's witnesses, said, among other things:

> "This historical reference to 'pamphlets' in that [*Lovell*] opinion and in other opinions of that court (Schneider v. State . . . ; Thornhill v. Alabama, 310 U. S. 88, 97; . . . etc.) is not limited to 'pamphlets' which are distributed without cost. Every student of history knows that the 'pamphlets' referred to by Chief Justice Hughes in his opinion, and by Mr. Justice Sutherland in the Grosjean case, were not for the most part circulated *gratis*, but were distributed to subscribers or sold."

See also the case of *Hannan et al.* v. *City of Haverhill et al.*, 120 F. 2d 87, where the Circuit Court of Appeals for the First Circuit said:

> " . . . Such use of the streets and public places, sanctioned by ancient usage, has become part of the liberties of the people protected by the Fourteenth Amendment from state encroachment. Hague v. C.I.O., 307 U. S. 496, 515; Schneider v. State, 308 U. S. 147, 163; Cantwell v. Connecticut, 310 U. S. 296, 303. We take it also that this constitutional right to make reasonable use of the streets for the purpose of distributing literature is *not limited to handing it out free of charge, but includes also the right to offer the literature for sale* so as to defray the cost of publication—otherwise, the circulation of one's opinions or the propagation of one's faith on an extensive scale would

tend to become a prerogative of the well-to-do. Cf. Lovell v. Griffin, 303 U. S. 444, 452. In Cantwell v. Connecticut, 310 U. S. 296, a state statute was invalidated as an unconstitutional restriction on the right to solicit funds for religious objects."

This type of law has been repeatedly held not to be applicable to solicitation of funds and contracts for the payment of money when solicited or contracted for by a religious organization or church on Sunday. In this connection, see the cases of:

Idaho v. Morris
155 P. 296

Commonwealth v. Nesbit (Pa.)
34 Pa. St. Rep. 398

Cronan v. Boston
136 Mass. 384

State v. Needham
134 Kan. 155; 4 P. 2d 464

Dale v. Knepp
98 Pa. St. Rep. 389, 392

Bryan v. Watson
127 Ind. 42; 62 N. E. 666

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81 N. W. 171; 110 Iowa 5

Allen v. Duffie
43 Mich. 1; 4 N. W. 427; 38 Am. Rep. 159

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18 Idaho 175

Bennett v. Brooks
91 Mass. 118

Pulitzer Pub. Co. v. McNichols (Mo.)
181 S. W. 1

60 Corpus Juris 1056

Finally we call to the Court's attention a decision by the Supreme Court of Iowa in the case of *State of Iowa* v. *Mead et al.*, 300 N. W. 523, decided November 12, 1941, which is directly in point in this matter, where the appellants were charged with a violation of the identical statute in which complaint it was alleged that Jehovah's witnesses desecrated the Sabbath in that "they did sell and attempt to sell literature on Sunday". In that case the court said as follows:

> "The state also contends the distribution of the booklets and occasional receipt of the sum of ten cents constituted 'selling property' within the prohibition of the act. However, appellants were not engaged in selling booklets. The alleged sales were merely incidental and collateral to appellants' main object which was to preach and publicize the doctrines of their order. Indicative of this was the practice of giving booklets to those unwilling to contribute. Appellants regarded the amounts received as donations and this was frequently the thought of those who gave money. Appellants were teaching and spreading their religious views without compensation and at their own expense. All receipts from the booklets were placed in a publication fund, which it was necessary to supplement by voluntary contributions to cover the cost of publishing the booklets. The commercial aspect of sales was absent. We do not think the statute contemplates that the distribution of booklets of this nature and under these particular circumstances constitutes desecrating the Sabbath."

Conclusion

It is therefore submitted that this case is one calling for the exercise by this Court of its supervisory powers to the end that errors complained of may be corrected and that to such end a writ of certiorari ought to be granted that this Court review the decision of the County Court of Westchester County of New York.

Confidently submitted,

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(13)

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Supreme Court of the United States

October Term, 1941

No. 831

ERMINIO MORANTE

Petitioner

against

THE PEOPLE OF THE STATE OF NEW YORK

Respondents

RESPONDENTS' BRIEF IN OPPOSITION

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Supreme Court of the United States

October Term, 1941

No. 831

ERMINIO MORANTE,
Petitioner,
against
THE PEOPLE OF THE STATE OF NEW YORK,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION

The petitioner has applied for review by writ of certiorari of judgment of the County Court of Westchester County, New York, which affirmed a judgment of the Court of Special Sessions of the Village of Mount Kisco, convicting the petitioner of a violation of Section 2147 of the Penal Law of the State of New York.

After a trial before the Court of Special Sessions the petitioner was found guilty and fined the sum of ten dollars, payment of which was suspended (Rec., p. 26). The opinion of the trial court, which is not reported, appears at pages 24-26 of the record. The County Court wrote no opinion, but its order of affirmance will be found at pages 31-32. Thereafter an application for leave to appeal to the Court of Appeals was denied by Chief Judge IRVING LEHMAN, without opinion, by an order dated October 2, 1941 (Rec., pp. 36-37).

The Facts

The petitioner was charged as follows in the information (Rec., p. 1):

> "That one Erminio Morante, on the 14th day of July, 1940, at East Main Street, in the Village of Mount Kisco, County of Westchester, N. Y., at about 11.45 o'clock in the forenoon of said day, did violate subdivision — of section 2147 of the Penal Law of the State of New York, by wrongfully, unlawfully, wilfully and knowingly publicly offered for sale and attempted to sell a pamphlet or circular entitled 'Judge Rutherford Uncovers Fifth Column,' on Sunday in violation of the above section of the Penal Law of The State of New York."

At the trial the petitioner admitted that he was in the village on the date mentioned "for the purpose of going from house to house and distributing Bible literature." From some persons he received contributions and money for the literature. If a person was unable to contribute he left a small book without charge (Rec., p. 2). In response to a question from the court he made the following admission (Rec., p. 2):

> "Defendant admits that he offered the literature for sale, and in one instance one book was sold and in three instances he gave away books."

Apart from these admissions the only proof taken was on the question of whether the petitioner was an ordained minister. He testified that he had been an ordained minister of "Jehovah's Witnesses" for six years, though he had had no college or seminary training prior to being ordained (Rec., p. 3). He offered in evidence a certificate, signed by the "Watch Tower Bible and Tract Society, J. F. Rutherford, President," certifying that the peti-

tioner was "an ordained minister of Jehovah God" and "one of Jehovah's Witnesses" (Deft's Ex. A, pp. 4-5). Fred N. Severud also testified that the petitioner was an ordained minister of Jehovah's Witnesses (Rec., p. 3).

No further proof was offered either by the prosecution or by the petitioner, except that the petitioner introduced in evidence a copy of the booklet which he admitted having offered for sale and sold (Rec., p. 3).

This booklet, marked in evidence as Defendant's Exhibit B, appears at pages 5-24 of the record. It is entitled "Judge Rutherford Uncovers Fifth Column," and purports to consist chiefly of a reprint of an undated letter written by the said Rutherford to a representative of the New York Post. The booklet has for its subject-matter a violently inflammatory attack on the Roman Catholic church, and particularly the clergy of that church, described in the booklet as the "Roman Catholic Hierarchy."

The Roman Catholic clergy are characterized in the booklet as the representatives of the Devil (Rec., p. 14), and his "chief instrument on earth" (Rec., p. 10). They are described as "a political organization, bent on destroying everything that represents the interests of the common people" (Rec., p. 8), and are charged with "attempting to grab control of the nations of the earth" (Rec., p. 7). They are "fifth columnists" (Rec., p. 8), engaged in a secret confederacy with the Nazis, Fascists and Communists (Rec., pp. 10-11), and working in the United States in cooperation with Hitler and Mussolini (Rec., p. 19). They directed the development of Nazism in Germany and are employing the same methods in America (Rec., p. 10). They are engaged in a "fanatical, devilish procedure to destroy democracies, destroy freedom of press and freedom of speech, and destroy all publishers of the truth" (Rec., pp. 12-13). It is said that "their purpose is to seize the government of the United States" (Rec., p. 13). The cellars and crypts of their churches are loaded with guns and ammunition "ready to act

against all opponents in due season" (Rec., p. 17). Stores of rifles have been smuggled into these crypts and cellars in piano boxes (Rec., p. 17). They are seeking to "bring the United States under the control of the Vatican" (Rec., p. 20). Theirs is "a great and hypocritical religious institution that has defamed His (God's) name and devoted its power to unrighteousness" (Rec., p. 18).

In his admissions made at the trial the petitioner characterized this booklet as "Bible literature" (Rec., p. 2). He employs the same descriptive term in his present petition (p. 10). He alleges that he was "doing good unto others in calling upon them at their homes and offering to them helpful Bible explanations in printed form" (Petition, pp. 10-11). Defendant's Exhibit B contains numerous biblical references, but a reading of the exhibit as a whole will show that it consists essentially of a violent attack upon the above-mentioned religious organization. The very title of the booklet discloses its purpose.

The foregoing is a summary of all the evidence in the case. At page 11 of the petition it is alleged that the petitioner testified that he was "commanded by Almighty God to go from house to house and from door to door with this literature, and that he did so from a sense of moral duty or a feeling of kindness for humanity" (Petition, p. 11). The petitioner gave no such testimony. Attention is drawn to the fact that in his affidavit on the application for leave to appeal to the County Court the petitioner gave a wholly inaccurate version of the testimony (Rec., pp. 27-29); so much so, that it was necessary for the Police Justice to protest the contents of the affidavit in his return to the County Court (Rec., p. 4).

The Statute

Section 2147 of the Penal Law reads as follows:

"Public Traffic on Sunday.

"All manner of public selling or offering for sale of any property upon Sunday is prohibited, except as follows:

"1. Articles of food may be sold, served, supplied and delivered at any time before ten o'clock in the morning;

"2. Meals may be sold to be eaten on the premises where sold at any time of the day;

"3. Caterers may serve meals to their patrons at any time of the day;

"4. Prepared tobacco, bread, milk, eggs, ice, soda-water, fruit, flowers, confectionery, souveniers, newspaper, gasoline, oil, tires, drugs, medicines and surgical instruments may be sold in places other than a room where spirituous or malt liquors or wines are kept or offered for sale and may be delivered at any time of the day.

"5. Delicatessen dealers and bakeries may sell, supply, serve and deliver cooked and prepared foods, between the hours of four o'clock in the afternoon and half-past seven o'clock in the evening, in addition to the time provided for in subdivision one hereof.

"The provisions of this section, however, shall not be construed to allow or permit the public sale or exposing for sale or delivery of uncooked flesh foods, or meats, fresh or salt, at any hour or time of the day. Delicatessen dealers shall not be considered as caterers within subdivision three hereof."

ARGUMENT

I

The statute as construed and applied in this case deprives the petitioner of no constitutional right.

Section 2147 of the Penal Law, under which the appellant was convicted, is a part of Article 192, entitled "Sabbath." The purpose of the New York Sabbath laws is stated as follows in section 2140:

> "The Sabbath.
>
> "The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community."

Section 2147 declares that "all manner of public selling or offering for sale of any property upon Sunday is prohibited." When the two sections are read together it will be seen that the Legislature has in effect determined and declared that public selling on the Sabbath is a "serious interruption of the rest and religious liberty of the community." It was competent for the Legislature to make such a determination and to prohibit such activities on Sunday. Statutes of this kind are in general a valid exercise of the police power of the states and within the Constitution.

> *Hennington* v. *Georgia*, 163 U. S. 299;
> *Petit* v. *Minnesota*, 177 U. S. 164.

It is obvious that the activity in which the petitioner was engaged is not included within any of the express exceptions found in the statute. The petitioner contends,

however, that an exception in his favor is to be implied because the statute is directed only against the sale of commercial articles for profit. This contention is unfounded. Section 2140, *supra*, shows that the statute is directed against every activity calculated to interrupt the repose and religious liberty of the community. Evidently the Legislature was of the opinion that all public sales, whether for profit or not, are likely to disturb the peace of the community and should therefore fall within the prohibition.

Furthermore, the state courts have construed the statute as prohibiting the activities of the petitioner in this case. This court will accept the interpretation of the statute by the courts of the state which enacted it, and will only consider the question of whether the statute, as so interpreted, deprives the petitioner of rights guaranteed by the Constitution.

> *Saltonstall* v. *Saltonstall*, 276 U. S. 260;
> *Supreme Lodge, etc.* v. *Meyer*, 265 U. S. 30;
> *Quong Ham Wah Co.* v. *Industrial Acc. Commission*, 255 U. S. 445.

The petitioner claims that the statute, as applied by the state courts, deprives him of his constitutional rights in that: (1) It denies him the right of religious freedom, and (2) it denies the right of freedom of the press. We will discuss each proposition separately.

(a) Religious Freedom

It is at least questionable whether the petitioner was engaged in any religious activity in distributing the pamphlet appearing in the record. In that very pamphlet appears the following assertion (Rec., p. 14):

> "Jehovah's witnesses are not a sect, not a religious organization."

The case therefore presents the situation of an individual, concededly not a member of any religious sect or organization, engaged in the sale of a booklet attacking an established church. It is difficult to see how such a person can claim to be engaged in any religious work.

But assuming the truth of the petitioner's premise, the state may nevertheless properly subject him to the restrictions of its Sabbath laws. Within recent years this court has determined three cases involving the group known as Jehovah's Witnesses, and in all three the opinions contain language appropriate to the present case.

In *Schneider* v. *State,* 308 U. S. 147, an ordinance prohibiting the distribution of circulars by house-to-house canvassing without a license from the police was held invalid. But the court said (p. 165):

> "Nor do we hold that the town may not fix reasonable hours when canvassing may be done by persons having such objects as the petitioner."

In *Cantwell* v. *Connecticut,* 310 U. S. 296, the court held invalid a somewhat similar ordinance, prohibiting the solicitation of funds for a religious cause unless the object was first approved by a local official. But there the court said (p. 305):

> "The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to constitutional objection, even though the collection be for a religious purpose."

And the court said further, in the same case (p. 306):

> "The State is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience."

These principles support the judgment in the present case. The statute does not unreasonably obstruct or delay the activities of the petitioner or the group to which he belongs. There is no claim, and certainly no evidence, that such activities could not be carried on as effectively on other days of the week. The petitioner is inconvenienced no more than any shopkeeper who is obliged to close his business on Sunday. And it is quite apparent that the prohibition of the sale of such literature as the petitioner had in his possession is conducive to public peace and safety, and therefore within the powers of the State Legislature. It requires no stretch of the imagination to perceive that such reading-matter would be highly offensive to many persons into whose homes these canvassers intrude; and that the public dissemination of pamphlets preaching religious hatred is calculated to foment public disorder. Surely the State must possess the power to protect the community against such provocation on the Sabbath.

The latest of the three cases mentioned above was *Minersville School District* v. *Gobitis*, 310 U. S. 586. There the court upheld a school board regulation requiring public school children to salute the flag. The respondents were members of "Jehovah's Witnesses" and claimed that the salute was contrary to their religious beliefs. The issue of religious freedom, and its relationship to reasonable civil regulation, was therefore directly presented. The court said (p. 594):

> "Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs."

The petitioner cites a recent decision by the Supreme Court of Iowa (*State* v. *Mead*, 300 N. W. 523), reversing

a conviction of other members of the same group for desecrating the Sabbath. There the court held that the defendants were not engaged in selling booklets, and that sales were merely incidental to the main object of preaching the doctrines of their order. Here it is conceded that the petitioner was selling the booklet and it does not appear that he was doing anything else.

(b) Freedom of the Press

It is fundamental that the right of freedom of the press, like the right of free speech, is not absolute. It is subject to reasonable limitation.

Gitlow v. *People*, 268 U. S. 652, 667.

The main purpose of the right of a free press is to prevent restraints upon the publication of the printed matter.

Patterson v. *Colorado*, 205 U. S. 454, 462.

While the free circulation of such material may be essential to the freedom of the press, reasonable regulation of such circulation is not prohibited by the Constitution.

Ex parte Jackson, 96 U. S. 727;
Gitlow v. *Kiely*, 44 Fed. 2d, 227, affd. 49 Fed. 2d, 1077, cert. denied 284 U. S. 648.

Thus the question reduces itself to this: Does the statute, as applied in this case, reasonably serve the purposes for which it was enacted, namely, the protection of the peace and religious liberty of the community? If so, it is a valid exercise of the legislative power. We submit that under the circumstances presented by the present record the statute has been properly and constitutionally applied by the New York courts.

II

The prayer for a writ of certiorari should be denied.

Respectfully submitted,

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(16)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

No. 831

■

ERMINIO MORANTE, *Petitioner*

v.

THE PEOPLE OF THE STATE OF NEW YORK

■

PETITIONER'S REPLY
to Respondent's Brief in Opposition to Petition for Writ of Certiorari

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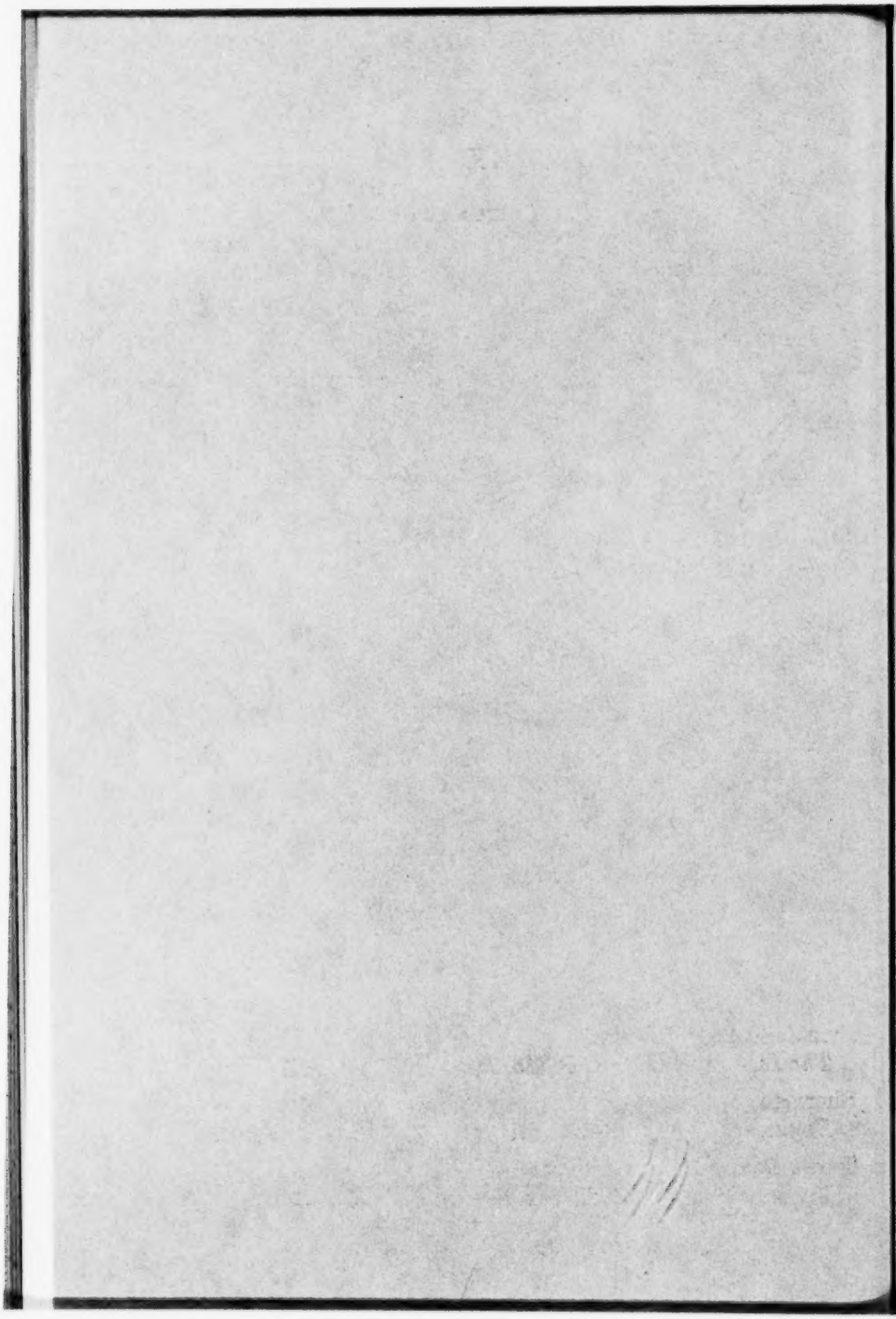

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

No. 831

■

ERMINIO MORANTE, *Petitioner*
v.
THE PEOPLE OF THE STATE OF NEW YORK

■

PETITIONER'S REPLY
to Respondent's Brief in Opposition
to Petition for Writ of Certiorari

Respondent manifestly has fallen into the same pit of error as did the trial court and the Westchester County Court when considering the issues involved as a result of an unsuccessful attempt to jump the broad gap between—

a) police power to prohibit Sunday sales of ordinary articles of merchandise upon the streets or from house to house, and

b) the occupation or activity of an ordained minister distributing on streets or at homes of the people literature containing information and opinion (simultaneously inviting and accepting money contributions to aid such work), protected by the Constitution against all sorts of State encroachment.

This gap between the two cannot be bridged or leaped over by law.

Respondent's entire brief is based upon the false premise that there is no distinction between "selling" *literature* and selling ordinary articles of merchandise.

Respondent contends that the law is regulatory. It is not.

The statute itself says 'selling or offering for sale upon Sunday is *prohibited*'.

The fact that the statute tacitly allows distribution of literature free of charge on Sunday is conclusive proof that its aim is not *regulation*.

The essence of respondent's brief is primarily a complaint directed against the *subject matter* of the literature distributed; and not against the taking of money contributions from some receiving such literature. In other words, the taking of money is not claimed by respondent to be 'serious interruption of the community's repose and religious liberty'. (Respondent's brief, pages 3, 4, 7 and 9.)

In this connection it is interesting to note that the undisputed evidence shows that petitioner did not provoke a breach of the peace, did not incite such, did not assault or threaten bodily harm, did not intrude or act with force or arms, and was not guilty of truculent bearing or personal abuse. On the contrary, he acted properly in all respects.

The undisputed evidence showed that no person objected to the content of the literature.

Such literature is an expression of truth and opinion based on exhaustive present-day investigation of "fifth column" activity of the named religious organization (acting under written agreements ["concordats"] with Mussolini and Hitler) in the democracies, including the United States of America. This subject matter is privileged from invasion by the State, according to injunction of the Fourteenth Amendment as held by this Court in *Cantwell* v. *Connecticut*, 310 U. S. 296, part *Second* of Opinion.

The pamphlet's charge that the Roman Catholic Hierarchy is in a conspiracy to destroy all democracies and the liberties of the people is not a new, unprovable one made exclusively and initially by the writer of this pamphlet.

That charge as relating to that organization in this nation is amply supported by well informed and highly respected authority in public life during more than a century past. A few of many authorities follow:

Samuel F. B. Morse, renowned inventor of the telegraph, wrote a book entitled *Foreign Conspiracy Against the Liberties of the United States,* published at New York in 1836 by Van Nostrand & Dwight (now D. Van Nostrand Co., Inc., New York), very widely circulated at the time. It was based upon his personal experience and investigations in Rome and at the Vatican. Morse's entire book constituted a warning to the American people whose liberties he was jealous to protect against invasion by the ROMAN CATHOLIC HIERARCHY. See also *The Life of Samuel F. B. Morse,* by Samuel Irenaeus Prime (1875), New York, D. Appleton & Co.

In 1836 the writers of the Texas Declaration of Independence recognized the same conspiracy and branded the Roman Catholic Hierarchy as the "eternal enemies of civil liberty, the ever-ready minions of power, and the usual instruments of tyrants". (R. 22, 23; Vernon Centennial Edition, Texas Revised Statutes, 1936.)

In 1883 *Engineer Corps of Hell,* written by Edwin Allen Sherman, traced the events leading up to Lincoln's assassination at the direction of the Vatican and warned the American people against the Roman Catholic Hierarchy's expressed determination to destroy this democracy. See also *Responsibility for the Assassination of Abraham Lincoln,* written in 1897 by Thomas Mealey Harris, Brigadier General, U.S.A., a member of the military commission before which the Jesuit-directed Catholic and non-Catholic coconspirators of John Wilkes Booth were tried and found guilty of assassinating President Lincoln.

E. Boyd Barrett, admitted ex-Jesuit, in 1935 wrote *Rome Stoops to Conquer,* published by Julian Messner, Inc., New York. That whole book carefully presents proof showing the aim of the Roman Catholic Hierarchy to destroy the

United States and subjugate the entire population to Vatican domination under totalitarian rule.

See also *Inside Europe,* written in 1938 by John Gunther. Therein is portrayed the "fifth column" activity of the Roman Catholic Hierarchy to advance and firmly establish Hitler's "new order".

Each of the aforementioned publications is available in the Congressional Library at Washington.

Thus it is seen that the questioned pamphlet relates to matters of fact and opinion shielded by the Constitution, and in which every honest lover of liberty and righteousness is deeply interested, be he Catholic, Protestant or Jew, bond or free. The pamphlet cannot properly be said to 'preach religious hatred'. Its dissemination is not "calculated to foment public disorder", as wrongfully charged by respondent.

Although the literature is objectionable to respondent in this case, it does not appear that any of the residents of Mount Kisco who received the pamphlet from petitioner objected to its contents. Therefore there is no evidence to support respondent's claim that the literature 'interrupts the repose and religious liberty of the community'. As was said in *Dearborn Publishing Co.* v. *Fitzgerald,* 271 F. 479, and in *Epoch P. Co.* v. *Davis,* 19 Ohio (NP) 465, it is an insult to Catholic residents of Mount Kisco to impute to them performance of acts creating public disorder by reason of reading the pamphlet. If *they* did so act, it would be the duty of the respondent to arrest and prosecute *them* and not the distributor of the pamphlet innocently and lawfully exercising his constitutional rights for the public welfare.

Respondent erroneously declares that in the cases cited, particularly *State* v. *Mead,* 300 N. W. 523, involving an identical Iowa statute, the evidence did not show Jehovah's witnesses to be "selling" the literature. There the court found facts identical with those found here and set aside the conviction.

In that case it was also contended that the content of the

literature constituted 'disturbing a worshiping assembly or private family'. There the court said:

> " . . . We are not prepared to hold that calling at private homes in the middle of the sabbath day, *however unwelcome the caller may be,* in itself, constitutes a desecration of the sabbath." [Italics added]

Respondent asserts that petitioner did not claim that he was commanded by Almighty God to go from house to house with the literature. The record impeaches that assertion: Exhibit A (R. 4, 5) specifically provides that petitioner, as one of Jehovah's witnesses, is commanded to obey Almighty God in preaching the gospel by offering booklets to people at their homes according to Acts 20: 20 and other cited injunctions of Holy Writ. In its opinion the trial court recognized that defendant was distributing and "selling literature as an ordained minister, that being his way of worshiping God on Sunday". R. 24.

Respondent says that petitioner did not attend a seminary or college, thereby implying petitioner is not entitled to be *called* a minister. It should be remembered that Jesus Christ's apostle Peter and many other faithful ministers of the Lord did not attend a parochial school. The record does not bear out the respondent's statement that no study, preparation or examination was necessary before petitioner's ordination. Before such ordination petitioner attended regularly in classes of study conducted by Jehovah's witnesses, studying the Bible, which is the only and true source of knowledge, wisdom and understanding for any minister of Almighty God.

We submit that it was the purpose of the statute in question to protect rights of the petitioner (judicially found to be an ordained minister worshiping Almighty God in the way wrongfully challenged by respondent) as well as to protect rights of religious clergymen who, in pursuing their ecclesiastical business on Sundays, *publicly* "sell" candles,

rosaries, prayer books and other literature. Incidentally, it is noteworthy that the statute does not specifically except such public "sales" by said clergymen.

Respondent contends that the pamphlet states "Jehovah's witnesses are not a sect, not a religious organization". It is to be noticed that immediately following that quotation the explanation is given and Jehovah's witnesses are shown to be true ordained ministers and ambassadors of Jesus Christ, worshiping Almighty God.

Admittedly, constitutional freedom of worship is not limited to practitioners of religion, whether of Mohammedan, Buddhist, Jewish, Shinto, so-called Protestant or the numerous varieties of catholic and other denominations, but extends also to protect every sincere servant of Almighty God.

For reasons above stated the writ of certiorari should be granted as prayed for in the petition.

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